

FILED

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
Southern Division**

2002 APR 15 PM 4:00
U.S. BANKRUPTCY COURT
N.D. OF ALABAMA

In re:

SHOOK & FLETCHER INSULATION CO.

Debtor-in-Possession.

**Case No. 02-02771-BGC-11
Chapter 11**

**SECOND DECLARATION OF WAYNE W. KILLION, JR. IN
SUPPORT OF VOLUNTARY PETITION AND FIRST DAY MOTIONS**

I, Wayne W. Killion, Jr., state:

1. I am the President and Chief Executive Officer of Shook & Fletcher Insulation Co. ("Shook" or the "Debtor"), the debtor and debtor-in-possession in the above-captioned Chapter 11 case. I am familiar with the Shook's day-to-day operations and business affairs, and its books and records.
2. On April 8, 2002 (the "Petition Date"), Shook filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Shook continues in possession of its properties and the management of its business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
3. My Declaration in support of the voluntary petition and the relief Shook sought in various "First Day" motions and applications was also filed with the Court on April 8, 2002 (the "Original Declaration"). This Second Declaration is intended to supplement my Original Declaration, and addresses matters relating to the First Day motions and application set for

39 ✓

hearing before the Court on April 17, 2002. Shook has referred to these six motions as the Critical Administrative Motions.¹

4. Except as otherwise indicated, the facts set forth in this Second Declaration are based upon my personal knowledge, my review of the Debtor's books and records, information conveyed to me by other representatives of the Debtor, including discussions with managers, other employees, and outside advisors, as well as my experience and knowledge of the Debtor's operations and financial condition. I am competent to testify to these matters, and if I were called as a witness, I would testify to the facts and opinions set forth below. Where my opinions relate to legal matters, I have consulted with Shook's lawyers with respect to such matters and am relying upon their advice.

THE CRITICAL ADMINISTRATIVE MOTIONS

Motion for an Order Scheduling Combined Hearing, Etc.

5. This motion seeks an order scheduling a combined disclosure statement and confirmation hearing, and fixing objection deadlines. Shook wishes to move this process forward to confirmation as promptly as possible, in light of the overwhelming acceptances of the Plan Shook has received.

Motion to Approve Notice Procedures for Individual Asbestos Claimants

6. By this motion, the Debtor seeks to include on the mailing matrix and to send all notices, mailings and other communications related to the Chapter 11 case designated for service upon all creditors, to counsel of record known to Shook to represent one or more Individual

¹ Any capitalized term not expressly defined in this Second Declaration shall have the meaning ascribed to that term in my Original Declaration.

Asbestos Claimants (as defined below), rather than notifying each Individual Asbestos Claimant directly.

7. Shook has received thousands of claims from individuals asserting damages for bodily injuries alleged to result from exposure to asbestos and asbestos-related products (collectively, "Individual Asbestos Claimants"). Based upon the most recent data, it appears that Shook presently has approximately 60,000 such claims pending and has over 20,000 such claims that have been settled by or on behalf of Shook but as to which Shook has not paid the full settlement amount.

8. While many Individual Asbestos Claimants have filed suit against Shook, other such claims have been asserted against Shook by counsel through demands or notices under settlement agreements with groups of Asbestos Claimants. Shook's asbestos-related litigation, as well as the group settlement agreements, in the past were coordinated on behalf of a large group of co-defendants, including Shook and other parties, through the Center for Claims Resolution, Inc. (the "CCR"). Because much of the data, if available at all, is with the CCR and the CCR has ceased operations, the Debtor does not have complete information concerning each and every Individual Asbestos Claimant that has asserted a claim or filed suit against it. In particular, due to the manner in which such claims were handled by the CCR and its designated network of defense counsel, the Debtor does not have, and cannot reasonably obtain, the addresses and other identifying information for each Individual Asbestos Claimant. The Debtor's records reflect only counsel of record for many of the Individual Asbestos Claimants, and to my knowledge, communication regarding such Asbestos Claimants and their various pending lawsuits has been through and with such counsel of record.

9. In connection with the pre-petition solicitation of acceptances of its Plan, I understand that Shook's counsel wrote to each of the over 150 law firms which the Debtor's records (and records obtained from CCR) reflect was an attorney of record for one or more Individual Asbestos Claimants. Debtor's counsel asked these attorneys of record to advise the Debtor of their clients' names (which Shook generally has or can obtain) and addresses (which Shook does not have), so that Shook could provide notice to individual claimants directly. Shook indicated that, if it did not receive this information, it would send solicitation packages to Individual Asbestos Claimants in care of their counsel of record. I am advised that, of the law firms which responded, only two asked that Shook send such information to their clients directly; all other law firms responding indicated that solicitation packages should be delivered to them, not to their individual clients. Shook proposes to utilize similar notice procedures in this case – sending notices to over 150 attorneys of record only, but not to the approximately 80,000 Individual Asbestos Claimants.

**Application for Entry of an Order Appointing
A Legal Representative for Purposes of
Section 524(g) of the Bankruptcy Code**

10. By this motion, the Debtor seeks appointment of a legal representative in its Chapter 11 case for persons who may assert claims in the future within the meaning of Section 524(g)(5) of the Bankruptcy Code (the "Legal Representative"). The Debtor had asked R. Scott Williams, Esquire, to serve in this capacity pre-petition and now asks the Court to continue his appointment.

11. Beginning in December 2001, the Debtor asked Mr. Williams to serve as the Legal Representative, and Mr. Williams agreed to do so. The Debtor had appointed Mr. Williams pursuant to an engagement agreement dated December 13, 2001, a copy of which is attached to

the Motion as Exhibit C. Following his appointment, Mr. Williams and his counsel were actively involved in conducting due diligence with respect to the pre-petition settlement agreements and the proposed Plan, as well as with respect to Shook and its financial affairs. Mr. Williams spent significant time and resources analyzing assets of the Debtor and reviewing the status of the pending asbestos claims and insurance coverage issues. Mr. Williams actively negotiated Plan documents, including the terms of the Trust to be created under the Plan. I believe Mr. Williams and his counsel undertook their responsibilities diligently and negotiated with the various parties in good faith.

12. The Debtor has agreed to provide a retainer of \$25,000 for Mr. Williams and his counsel. The Debtor has agreed to compensate Mr. Williams at his regular hourly rate of \$200 per hour, and to reimburse Mr. Williams for reasonable expenses incurred in connection with his duties, all subject to allowance by the Court. Mr. Williams has indicated that he will retain counsel to assist him in the performance of his duties, and the Debtor has agreed to reimburse Mr. Williams for the reasonable fees and expenses incurred by such counsel for services within the scope of his employment by Mr. Williams, as allowed by the Court.

13. Given Mr. Williams' involvement since December 2001, and his knowledge and experience in these matters, the Debtor requests that Mr. Williams be appointed as the Legal Representative for this case.

**Motion for Extension of Time to File Schedules of
Assets and Liabilities and Statement of Financial Affairs**

14. The Debtor has business operations at six locations in three states, which involve numerous assets, liabilities, executory contracts and unexpired leases. Annual revenues for the fiscal year ending December 31, 2001 were in excess of \$22 million. The Debtor already has begun assembling information and preparing the Schedules and Statements. The Debtor does

not, however, anticipate being able to complete Schedules and Statements fully and accurately within the time required by Bankruptcy Rule 1007. The Debtor presently believes it can finalize the Schedules and Statements by May 8, 2002, and therefore requests until that date to file those documents. This relief will assist the Debtor in providing Schedules and Statements that are more accurate and complete than if such documents had to be filed more quickly.

**Application for Authority to Employ
Swidler Berlin Shereff Friedman, LLP as Bankruptcy Counsel**

15. The Debtor seeks to retain Swidler Berlin Shereff Friedman, LLP (“Swidler”) as its bankruptcy counsel, based on the firm’s expertise and its extensive experience with and knowledge of the Debtor’s business affairs, and the proposed Plan and accompanying Disclosure Statement. Swidler has represented and advised the Debtor since June 2001, and provided extensive and valuable services to the Debtor prior to the Petition Date. I and other management personnel of the Debtor have relied heavily upon SBSF as the Debtor’s restructuring counsel. Swidler was intimately involved in the Debtor’s restructuring , including the negotiation and preparation of the pre-petition settlement agreements and the Plan and Disclosure Statement, as well as developing and implementing the pre-petition solicitation procedures and preparing for the Chapter 11 case. The Debtor wishes to retain the knowledge and expertise of Swidler to represent it in completing this restructuring process.


**Application for Authority to Employ Lange, Simpson,
Robinson & Sommerville, LLP as Bankruptcy Counsel**

16. The Debtor also seeks to retain Lange, Simpson, Robinson & Sommerville, LLP (“Lange Simpson”) as its Birmingham-based bankruptcy counsel. I understand that Lange Simpson regularly practices, and is admitted to practice generally, in this Court, and that Swidler is not. The Debtor wishes to have Swidler and Lange Simpson work together on this case, to

combine Swidler's knowledge and expertise, especially its knowledge of the case and the Plan, with Lange Simpson's knowledge and expertise practicing in this Court. I have instructed Swidler and Lange Simpson to confer and work together to allocate responsibilities as appropriate in an effort to minimize the risk of duplication of tasks between them.

* * * *

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



WAYNE W. KILLION, JR.

Executed on April 15, 2002